

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6118**

**BILL NUMBER:** HB 1025

**NOTE PREPARED:** Nov 4, 2007

**BILL AMENDED:**

**SUBJECT:** Operating While Intoxicated Causing Death.

**FIRST AUTHOR:** Rep. Cheatham

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Enhanced Penalty:* The bill makes operating a motor vehicle or motorboat while intoxicated and causing the death of another person a Class B felony instead of a Class C felony.

*Prohibited Plea Agreements:* It prohibits a prosecuting attorney from entering into a plea agreement if the defendant has been charged with operating a motor vehicle or motorboat while intoxicated causing death.

*Suspended Sentence Limitations:* The bill also allows a court to suspend only that part of a sentence that is in excess of the minimum sentence imposed on a person convicted of operating a motor vehicle or motorboat while intoxicated causing death.

*Credit Time Limitations:* It specifies that a person imprisoned for operating a motor vehicle or motorboat while intoxicated causing death may not earn credit time for at least six years.

*Conformance:* It makes conforming amendments.

**Effective Date:** July 1, 2008.

**Explanation of State Expenditures:** *Summary* - The bill will increase costs for incarceration of offenders convicted of causing death when operating a motor vehicle or motorboat while intoxicated by (1) enhancing the penalty, (2) not allowing plea agreements, and (3) limiting suspended sentences and credit time. Incarcerating these offenders an additional 3.1 years on average will require an additional 78 beds. Costs would begin increasing in 2010 as offenders serve beyond the current average length of stay. At the average annual cost of incarceration, the provisions will cost between \$1.0 M and \$1.5 M in 2014 when the full

impact of the bill's provisions affect the size of the prison population.

#### Methodological Issues -

*Enhanced Penalty:* State expenditures would increase if an offender is incarcerated in a state prison for a longer period of time. A Class C felony is punishable by a prison term ranging between 2 to 8 years, depending upon mitigating and aggravating circumstances. A Class B felony is punishable by a prison term ranging from 6 to 20 years. More offenders could mean increased costs to the Department of Correction (DOC).

*Prohibited Plea Agreements and Suspended Sentence Limitations:* The number of offenders committed to a state correctional facility could increase or the length of time served may increase if offenders guilty of causing death when operating a motor vehicle or motorboat while intoxicated are not able to plea bargain or if portions of the sentence may not be suspended. Bureau of Motor Vehicle (BMV) citation reports indicate that on average between 2001 and 2005, 33 offenders a year were found guilty of causing death when operating a motor vehicle or motorboat while intoxicated. This number is greater than the average number of commitments to state correctional facilities during the same time period and may reflect the effects of plea agreements or suspended sentences. However, the data are not conclusive since an offender may be sentenced for more than one offense at the same time and/or there may be a lag between sentencing and incarceration in a state facility.

Under current law, the court may suspend any part of a sentence, except if the offender has accumulated two previous convictions under IC 9-30-5 or was convicted of causing death when operating a motor vehicle or motorboat while intoxicated after a previous conviction or with a suspended or revoked license (IC 9-30-5(b)).

*Credit Time Limitations:* An offender assigned to Class III instead of Class I will serve a longer period of incarceration. Between 2002 and 2006, offenders committed to the DOC for causing death when operating a motor vehicle or motorboat while intoxicated were assigned to Class I, meaning the offender earns one day of credit time for each day imprisoned for a crime or confined awaiting trial or sentencing. Under the bill, offenders are assigned to Class III for six years or as determined by the court if sentenced for more than six years. Class III offenders earn no credit time.

*Estimated Increased Costs:* The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138. If a small number of offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, the minimum costs for adding a significant number of prisoners into the state prison system would likely be more than the marginal cost, but less than the average annual costs of housing offenders in a state facility. For purposes of this bill, the minimum cost was estimated at \$35 a day, the per diem cost to the DOC of housing prisoners in county jails.

On average between 2001 and 2005, 25 offenders were committed to a state correctional facility for causing death when operating a motor vehicle or motorboat while intoxicated, a Class C felony. The average length of stay in DOC facilities for all Class B felony offenders is approximately 3.7 years, the average length of stay for all Class C felony offenders is about 2.0 years. Between 2004 and 2006, the average length of stay for offenders convicted of causing death when operating a motor vehicle or motorboat while intoxicated was 2.9 years.

Assuming that 25 offenders a year are incarcerated for an average length of stay of 6 years (the minimum period under the bill) instead of 2.9 years, the DOC would need an additional 78 beds a year to house these offenders. Based on the average cost for housing prisoners in county jails of \$35 a day, the additional costs for these offenders would be \$997,000 in 2014, but based on the annual average expenditure for housing an adult offender in a state prison facility, the additional cost would be about \$1.5 M in 2014. Costs resulting from the provisions of the bill would begin increasing in 2010 as offenders serve beyond the current average length of stay.

**Explanation of State Revenues:** No change would likely occur in state revenue as a result of this bill since criminal fines and court fees are the same for either Class C or B felonies.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** No additional revenues would be expected since the court fees for Class C and Class B felonies are both \$120.

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association, Department of Correction; [http://www.in.gov/judiciary/admin/courtmgmt/stats/2005/v1/trialcourts/methods\\_disp\\_all.pdf](http://www.in.gov/judiciary/admin/courtmgmt/stats/2005/v1/trialcourts/methods_disp_all.pdf).

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